

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 6234**

**BILL NUMBER: SB 67**

**DATE PREPARED:** Apr 5, 2001

**BILL AMENDED:** Apr 5, 2001

**SUBJECT:** Definition of Minimum Sentence.

**FISCAL ANALYST:** Mark Goodpaster

**PHONE NUMBER:** 232-9852

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

(A) It eliminates a mathematical error in the definition of "minimum sentence" by changing the definition of "minimum sentence" for murder from 30 years to 45 years and by changing the definition of "minimum sentence" for a Class D felony from one year to one-half year.

(B) It provides additional sentencing options for nonviolent drug felony offenders.

(C) It provides that nonviolent drug felonies may not be used to classify an offender as a habitual offender.

(D) It allows a court to reduce the minimum term of imprisonment for a habitual substance offender if the only offenses that the offender committed were nonviolent criminal acts.

**Effective Date:** (Amended) Upon passage; July 1, 2001.

**Explanation of State Expenditures:** (Revised) Provision A resolves the current conflict in the sentencing statute concerning how minimum sentences are determined for murder and Class D felonies. Consequently, the practical effect is that no change will occur in sentencing patterns of the trial courts.

While IC 35-50-2-1(c)(1) specifies that the minimum sentence for murder is 30 years, IC 35-50-2-3 states that the fixed term is 55 years with not more than 10 years added for aggravating circumstance and 10 years subtracted for mitigating circumstances.

For Class D felonies, IC 35-50-2-1 specifies that the minimum sentence is one year while IC 35-50-2-7 specifies that the fixed term is 1.5 years with 1.5 years added as aggravators and one year subtracted for mitigators.

Provision B may reduce the need for additional beds in DOC facilities in future years, depending on the decisions by the sentencing courts. The following are the major changes to the sentencing laws. More information will be provided on the potential reduction in beds if information becomes available.

Community Transition Changes: The following table shows how the community transition program would be extended for offenders:

Felony Class:	Length of Program		Reduced Time In DOC
	Current Law	Proposed	
Class A -- nonviolent drug felonies	120 days	180 days	60 days
Class A -- all other felonies	120 days	no change	no change
Class B -- nonviolent drug felonies	120 days	180 days	60 days
Class B -- all other felonies	120 days	no change	no change
Class C -- nonviolent drug felonies	90 days	120 days	30 days
Class C -- all other felonies	90 days	no change	no change
Class D	60 days	no change	no change

Minimum Sentence Hearings: Under current law, the Department of Correction is required to determine whether Class D offenders are appropriate candidates for home detention. DOC sends these recommendations to the sentencing court. The sentencing court then holds a hearing to determine whether a person should be on home detention. Under this bill, the Department may also consider whether an offender could also be placed either on probation or in a community correction program, as well as on home detention, instead of in prison.

The following shows the number of commitments for Class C and D drug-related felonies between FY 1996 and FY 2000:

Felony	Crime	1996	1997	1998	1999	2000
C	Dealing in a Schedule IV Controlled Substance	7	17	6	9	16
C	Dealing in Marijuana, Hash Oil, or Hashish	50	63	56	58	76
C	Dealing/Possessing Look-Alike Substance	17	7	7	12	11
D	Dealing in a Counterfeit Substance	1	1	1	1	1
D	Dealing in a Schedule V Controlled Substance	3	1	2	0	3
D	Dealing in a Substance Represented to be a Cont. Sub.	10	7	5	8	6
D	Dealing in Marijuana Hash Oil or Hashish	38	53	35	31	9
D	Dealing in Paraphernalia	0	0	0	0	63
C	Possession of a Controlled Substance	4	8	10	14	21
C	Possession of Cocaine or a Narcotic Drug	91	110	96	140	192
D	Forged Prescription	0	0	0	0	1
D	Possession of a Controlled Substance	47	47	50	75	113
D	Possession of Cocaine or a Narcotic Drug	171	204	188	231	382
D	Possession of Marijuana Hash Oil or Hashish	60	69	82	110	188
D	Possession of Paraphernalia	6	8	11	23	24
C	Controlled Substance Registration	5	1	5	3	1
D	Controlled Substance Registration	4	10	8	6	14
D	Maintaining a Common Nuisance	7	8	19	12	31
Total		<u>521</u>	<u>614</u>	<u>581</u>	<u>733</u>	<u>1152</u>

Direct Placement in Community Corrections Programs: Under current law, offenders convicted of nonviolent Class A or B drug felonies are not permitted to be placed directly into community corrections programs. Instead, they must be sentenced to a minimum time in state prison. This bill would permit these offenders to be placed directly into community corrections programs.

The extent to which these offenders will reduce the number of cells used by DOC facilities would depend on the decisions of the sentencing courts and whether the community corrections programs would have space available. DOC reports the number of offenders received between FY 1996 and FY 2000 for the following drug offenses:

<u>Felony</u>	<u>Crime</u>	<u>Fiscal Year</u>				
		<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
A	Dealing in Schedule I, II, or III Controlled Substance	6	2	1	6	16
A	Dealing in Cocaine or a Narcotic Drug	74	79	87	114	127
A	Possession of Cocaine or Narcotic Drug	5	6	4	11	31
B	Dealing in Cocaine or Narcotic Drug	436	483	455	535	678
B	Dealing in a Schedule V controlled substance	0	0	0	0	2
B	Dealing in a Schedule IV controlled substance	1	1	4	0	3
B	Dealing in a Schedule I, II or III controlled Substance	48	83	80	121	187
B	Possession of Cocaine or Narcotic Drug	<u>16</u>	<u>31</u>	<u>37</u>	<u>61</u>	<u>100</u>
Total		<u>586</u>	<u>685</u>	<u>668</u>	<u>848</u>	<u>1,144</u>

Limitations on Habitual Offender Sentencing: Under current law, offenders with two prior unrelated felony convictions are required to serve an additional sentence if they are convicted of a third prior unrelated felony. This third felony is called the underlying offense. The minimum sentence is not less than the presumptive sentence for the underlying offense. The maximum sentence is the lesser of either three times the presumptive sentence or 30 years. (IC 30-50-2-8(e)).

The following table shows the minimum and maximum enhanced sentences under current law.

Felony	Added Sentence for Third Felony Under Habitual Offender Statute	
	Minimum Sentence	Maximum Enhanced Sentence
Class D	1.5 years	4.5 years
Class C	4 years	12 years
Class B	10 years	30 years
Class A	30 years	30 years

This bill would exempt nonviolent drug felonies and two other types of felonies as one of the two prior felonies. In addition, nonviolent drug felonies would not be eligible to be an underlying offense. Consequently, this would likely reduce the length of stay for some offenders.

Limitations on Three Strikes Statute: Under current law, the state may seek to have a person sentenced to life imprisonment without parole for one of 18 felonies if the defendant has accumulated two prior unrelated

convictions for any of these 18 felonies. Two of these 18 felonies include dealing in cocaine or a narcotic drug as a Class A felony and dealing in a Schedule I, II, or III controlled substance if the amount was greater than three grams. These two felonies would be exempted from the list of felonies for which an offender may be sentenced to life imprisonment without parole.

**Limitations on Habitual Substance Offender Sentencing:** Under current law, a person who has two prior unrelated substance abuse convictions can be sentenced as a habitual substance abuse offender if the person is convicted of a third offense. The additional term of imprisonment for habitual substance abuse offenders is between three and eight years. Under this bill, the court may consider the fact that these substance offenses were not part of an episode of criminal conduct involved in a criminal act and may reduce the additional fixed term to a minimum of one year.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** Courts may sentence more offenders to probation programs and community corrections programs. Consequently, workloads at the local level would likely increase.

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts, Community corrections programs, probation programs, prosecuting attorneys.

**Information Sources:** Steve Johnson, Indiana Prosecuting Attorneys Council, Department of Correction.